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IN THE
COURT OF APPEALS OF INDIANA

TRAVIS SMITH,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0609-CR-776
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Tanya Walton Pratt, Judge
Cause No. 49G01-0606-FB-106636

April 3, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Travis Smith was convicted of theft[1] as a Class D felony after a bench trial. He appeals raising one issue, which we restate as whether sufficient evidence was presented to support his conviction.

We affirm.

FACTS AND PROCEDURAL HISTORY

On June 9, 2006, Minnefer Mernahkem's next-door neighbor noticed some activity at Mernahkem's home. The neighbor saw a blue truck pull into the driveway of Mernahkem's home and observed two men, who were later identified as Smith and Daniel Hampton, exit the truck. Hampton wiggled the knob on the front door of Mernahkem's home, and when the door did not open, he went around to the back of the home. A few minutes later, the neighbor saw Smith and Hampton carry a refrigerator down the front steps of Mernahkem's home and load it into the back of the truck. The neighbor then called the police and gave them a description of the men and the truck. An officer with the Indianapolis Police Department responded to the dispatch and stopped Smith and Hampton a short distance from Mernahkem's home after observing them pull out of the driveway.

The neighbor also called Mernahkem, who arrived home, and identified the refrigerator in the back of the truck as his. At that time, Mernahkem told the police that he did not know Smith and Hampton and that they did not have permission to take anything from his home. Mernahkem accompanied the police officer to the back door of his home and discovered that the door had been broken open and that the dead bolt was lying on the mat outside of the door. Mernahkem had been in the home earlier that day, and the doors and

[1] *See* IC 35-43-4-2.

locks were all in good condition. Inside the home, Mernahkem and the officer observed the water line to the refrigerator had been cut and water was running out onto the floor. Water had soaked through the floor and damaged the ceiling in the basement.

On June 13, 2006, the State charged Smith with burglary as a Class B felony and theft as a Class D felony. After a bench trial, the trial court found Smith guilty of theft as a Class D felony and sentenced him to one year incarceration. Smith now appeals.

DISCUSSION AND DECISION

Our standard of review for sufficiency claims is well settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Dickenson v. State*, 835 N.E.2d 542, 551 (Ind. Ct. App. 2005), *trans. denied*. We will consider only the evidence most favorable to the judgment together with the reasonable inferences to be drawn therefrom. *Id*.; *Robinson v. State*, 835 N.E.2d 518, 523 (Ind. Ct. App. 2005). We will affirm the conviction if there is sufficient probative evidence to support the judgment of the trier of fact. *Dickenson*, 835 N.E.2d at 552; *Robinson*, 835 N.E.2d at 523. In order to convict Smith of theft as a Class D felony, the State was required to prove that he knowingly or intentionally exerted unauthorized control over property of another person, with the intent to deprive the other person of any part of its value or use. IC 35-43-4-2.

Smith argues that insufficient evidence was presented to support his theft conviction because the testimony of the neighbor was incredibly dubious. Under the incredible dubiosity rule, a court may "'impinge on the jury's responsibility to judge the credibility of the witness only when confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiosity.'" *White v. State*, 846

N.E.2d 1026, 1032 (Ind. Ct. App. 2006), *trans. denied* (quoting *Stephenson v. State*, 742 N.E.2d 463, 497 (Ind. 2001), *cert. denied* (2002)). The application of this rule is rare and is limited to cases where the testimony of a sole witness is so incredibly dubious or inherently improbable that it runs counter to human experience, and no reasonable person could believe it. *Herron v. State*, 808 N.E.2d 172, 176 (Ind. Ct. App. 2004), *trans. denied*; *Kien v. State*, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), *trans. denied*.

Smith contends that the neighbor's testimony was incredibly dubious because the neighbor stated that Mernahkem had not been home on June 9, 2006 when Mernahkem testified that he had, in fact, been home earlier in the day for approximately four hours. Smith also points to the neighbor's statement that he had seen Smith during an earlier burglary at Mernahkem's home on either June 6 or during the week of Memorial Day, but Smith was actually incarcerated from May 21 until earlier in the day on June 9. Smith argues that these inconsistencies in the neighbor's testimony make it incredibly dubious. We disagree.

Here, although there were some inconsistencies in the neighbor's testimony, his testimony was corroborated by the circumstantial evidence. The evidence showed that, when the police arrived, someone had broken in the back door of Mernahkem's home sometime after he had left earlier in the day. Someone had removed the refrigerator from the kitchen and had done so in such a hurry that the water line had been cut without turning off the water. The police officer observed the blue truck leave Mernahkem's driveway shortly after receiving the dispatch regarding the neighbor's call, and when the truck was stopped, Mernahkem's refrigerator was in the bed of the truck. Therefore, the incredible dubiosity

rule does not apply in this case.

Smith also asserts that there was insufficient evidence to support his conviction because he and Hampton did not knowingly exert unauthorized control over the refrigerator. He claims that Mernahkem's brother had sold them the refrigerator and that the refrigerator was already on the front porch when they arrived at the home, which they believed belonged to the brother. The evidence does not supprt these claims. The neighbor saw both Smith and Hampton drive up together in the blue truck, but did not see Mernahkem's brother at the home.[2] Hampton was then observed wiggling the knob on the front door, and when he could not open that door, he went to the back of the house. After only a few minutes, the neighbor next saw Smith and Hampton carrying the refrigerator down the front steps and loading it onto the truck. When Mernahkem arrived at his home, he discovered that the back door had been broken in, with the dead bolt lying on the ground outside. Inside, the refrigerator was missing, and the water line had been cut without turning the water off, which had caused water to leak into his basement. We conclude that the evidence presented was sufficient to support Smith's conviction for theft.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.

[2] The neighbor testified that he had previously met Mernahkem's brother, but did not see him on the day of this incident. *Tr*. at 19, 20.